

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

RICHARD R. FURSTENAU,)
)
Plaintiff,)
)
v.)
)
CITY OF NAPERVILLE, a municipal)
corporation; **MICHAEL HULL**,)
in his individual and official capacity;)
DAVID DIAL, in his individual and official)
capacity; **MICHAEL CROSS**, in his)
individual and official capacity;)
PETER BURCHARD, in his individual)
and official capacity; **MARGO L. ELY**,)
in her individual and official capacity,)
and **JOE MATCHETT**, in his individual)
and official capacity,)
)
Defendants.)

No. 07 C 6143

The Honorable Charles R. Norgle

Magistrate Judge Geraldine Soat Brown

JURY TRIAL DEMANDED

**PLAINTIFF'S MOTION FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT**

Plaintiff, by his undersigned counsel, pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure, respectfully requests leave to file his Second Amended Complaint (copy attached as Exhibit A). In support of his motion, Plaintiff states as follows:

1. Plaintiff requests leave to file a Second Amended Complaint which adds more than 40 new paragraphs (counting subparagraphs) of factual allegations, principally as to Defendants City of Naperville, Peter Burchard, Margo Ely and Joe Matchett.

2. While Plaintiff had previously amended his Complaint, it was done pursuant to Fed. R. Civ. P. 15(a)(1)(A), as no Defendant by then had served Plaintiff with a responsive pleading.

3. Defendants City of Naperville and Burchard, Ely and Matchett each has filed a motion to dismiss Plaintiff's First Amended Complaint, pursuant to Fed. R. Civ. P. 12(b)(6), and this Court entered a briefing schedule thereon, requiring Plaintiff's response by January 31. (Defendants Dial, Cross and Hull have previously filed answers.)

4. While Plaintiff believes Defendants' motions are without merit, the new factual allegations contained in the proposed Second Amended Complaint more than amply address the concerns expressed in Defendants' motions, and thus obviate the need for briefing thereon.

5. This case (filed October 31, 2007) is not yet three months old, and no discovery or other deadlines have been set by the Court. At this early juncture in the case, leave to amend is plainly warranted, in view of Rule 15(a)(2)'s direction that "leave shall be freely given when justice so requires."

WHEREFORE, Plaintiff respectfully requests that he be granted leave to file his Second Amended Complaint.

Dated: January 28, 2008

Respectfully submitted,
RICHARD R. FURSTENAU

By: s/ Shawn M. Collins
One of the Plaintiff's Attorneys

Shawn M. Collins
John A. Sopuch III
Edward J. Manzke
Aaron W. Rapier
THE COLLINS LAW FIRM, P.C.
1770 N. Park Street, Suite 200
Naperville, Illinois 60563
(630) 527-1595
(630) 527-1193 – Fax

CERTIFICATE OF SERVICE

I certify that a true and correct copy of **Plaintiff's Motion for Leave to File Second Amended Complaint** was electronically served on all counsel of record as a result of the CM/ECF filing of this document on January 28, 2008.

s/ Shawn M. Collins

Shawn M. Collins
John A. Sopuch III
Edward J. Manzke
Aaron W. Rapier
THE COLLINS LAW FIRM, P.C.
1770 N. Park Street, Suite 200
Naperville, Illinois 60563
(630) 527-1595
(630) 527-1193 – Fax